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REGULATION OF OUTSIDE EMPLOYMENT OF FIREMEN

To what extent do city firemen hold outside jobs? How do cities regulate such outside employment?

One of the controversial questions in municipal personnel administration is whether employees should be permitted to have supplementary outside jobs. This is also of concern to business and industry, where this practice is called "moonlighting." Moonlighting is defined as paid work done after hours (day, night, or week-ends) that is entirely separate from a man's regular job and which takes 10 hours or more of his time per week.

This practice is of particular concern to municipal fire administrators. With the continuing trend of reducing the number of duty hours for firemen, and the prevalence of the 24-hour shift, the amount of free time available to firemen presents more of an opportunity for moonlighting than for any other class of municipal employee.

This topic was generally discussed in MIS Report No. 155, *Regulation of Outside Employment for City Employees* (December, 1956). Although this report touched briefly on the outside employment of firemen, the extent of administrative regulation in this area was unknown. In assembling data for the 1959 *Municipal Year Book*, fire chiefs were asked to indicate whether outside employment of firemen was prohibited, permitted with certain restrictions, or permitted without restriction. In order to provide municipal administrators with current information as to the practices of cities in the regulation of outside supplementary employment of firemen, this report summarizes the data gathered from the *Year Book* questionnaires, with additional information secured from selected cities.

Legal Basis

The question of outside employment has not been litigated very frequently in the courts. The few decisions available would seem to indicate stringent regulations or even flat prohibitions are acceptable for firemen. For example, the Wisconsin state supreme court unanimously upheld a Milwaukee fire department regulation prohibiting firemen from working on their off days. The firemen contended they were compelled by economic circumstances, illness, and other factors to seek outside work to supplement their salaries.

In upholding the regulation the Wisconsin court said: "It is conceded that the rule and the ordinance must bear a rational relationship to the maintenance of an efficient fire department. One of the reasons for the rule is to insure that members of the department will be at all times in physical condition to perform their duties if called upon to perform them. . . . A fireman is subject to call for duty 24 hours a day. . . . If the rule is harsh it is for the individual to determine whether he will subject himself to its terms by becoming a member of the department. The right to work for the public is a privilege which may be granted on any conditions which the public may impose, consistent with the law and public policy, and when an individual enters such employment, he impliedly surrenders certain natural rights which would remain his if he were a private citizen."

Trends in Working Conditions

In order to understand why moonlighting may become a problem in some cities, it would be

best to review some of the changes taking place in the employment conditions prevailing in fire departments. For the past five years, approximately 100 cities per year have reduced the duty week for firemen. Between the years 1947 and 1957, the median duty week for firemen was 72 hours, and in 1958 the median work week dropped to 67 hours. Table 1 shows the range and the median number

Table 1

Hours per Work Week and Hours on Day Shift for
Firemen in Cities over 10,000: 1958

Population Group	Work Week		Number of Cities by Hours on Shift				
	Range	Median	8	10	12	24	Other
Cities over 500,000	42-67	56	0	6	1	9	2
250,000 to 500,000	42-72	60	0	5	0	18	0
100,000 to 250,000	42-84	60	2	23	1	39	0
50,000 to 100,000	40-84	63	2	35	2	93	1
25,000 to 50,000	40-84	63	6	66	1	197	1
10,000 to 25,000	40-94	72	23	56	9	436	9
All cities over 10,000	40-94	67	33	191	14	792	13

of duty hours per week and the hours on the day shift by population group. As pointed out in MIS Report No. 164, *Utilization of Firemen's Time* (September, 1957), most of a fireman's duty time is stand-by time, being spent in recreation, eating, and sleeping. Only about one-third of the work week could be called productive time.

Approximately 76 per cent of the reporting cities for the 1959 *Municipal Year Book* stated that the day shift normally utilized was 24 hours (see Table 1). In these cities utilizing the 24-hour shift, each fireman has an average of 17 of these 24-hour days off each month. A number of these off-duty days are in three-day cycles, which increases the opportunity of moonlighting.

During the period of 1953 to 1958, the median entrance salary for firemen in the over-500,000 population group increased by 22.3 per cent. Taking into consideration the accompanying change in the consumer price index, the increase in purchasing power was 12.5 per cent. For cities of 250,000 to 500,000 population, the dollar increase was 28.7 per cent and the purchasing power increase was 18.4 per cent. For cities of 100,000 to 250,000 population, the increases were 29.1 per cent and 18.8 per cent; for cities of 50,000 to 100,000 population, the increases were 23.6 per cent and 13.7 per cent; for cities of 25,000 to 50,000 population, the increases were 27.4 per cent and 17.2 per cent; and for cities of 10,000 to 25,000 population, the increase in dollars was 26.4 per cent and the increase in purchasing power was 16.3 per cent. During this same period, the consumer price index increased by only 8.7 per cent.

Current Practices

Employment Prohibited. As shown in Table 2, 119 of the reporting cities over 10,000 population (10.9 per cent) prohibit supplementary outside employment of firemen. Of these 119 cities, outside employment is prohibited by departmental regulations in 65 cities; by ordinance in 24 cities; by civil service rules in 19 cities; by mayor order in five cities; by manager order in four cities; and by charter in two cities. The prohibition against outside employment is most prevalent in the 250,000-to-500,000 population group where it is prohibited in 43.5 per cent of the reporting cities. Examples of these prohibitions follow.

Section I, #48. Every member of the department shall devote his whole time to the business of the department, and is expressly prohibited from being engaged in, employed in, or giving personal attention to any other type of employment while off duty. Such violation may be cause for dismissal from the service. (Cambridge, Massachusetts: departmental rule, Section I, #48.)

Table 2

Regulation of Firemen's Outside Employment

Population Group	Number of Cities Reporting	Prohibited	Permitted with Restrictions	No Restrictions
Over 500,000	17	8	5	4
250,000 to 500,000	23	10	12	1
100,000 to 250,000	66	17	25	24
50,000 to 100,000	123	20	49	61
25,000 to 50,000	230	38	89	146
10,000 to 25,000	583	36	177	380
All cities over 10,000 . . .	1,092	119	357	616

AFFIDAVIT AS TO OUTSIDE EMPLOYMENT. Because the rules of the Department require that every member of the Fire Department shall devote his whole time and attention to the service of the Department, effective as of today, every employee in the Fire Department of the City of Dearborn shall sign an affidavit stating that he is not performing any work or service of any character for any person, firm, or corporation for wages, salary, or fees except his employment with the City of Dearborn and the remuneration which he receives from said City, and stating that he is not engaged in a business or enterprise of any kind other than that connected with his employment in said Fire Department, and further stating that as long as he is employed by the City, he will not engage in any employment, work, or service of any character other than that for which he is employed by the City and that he will not engage in any business or enterprise apart from said City employment. (Dearborn, Michigan: departmental rule, Sec. 17, as amended July 7, 1948.)

Outside Employment. No member of the Department shall engage in any work for compensation while on his off-time. Any member found in violation of this rule, by the Chief of the Department will subject himself to Commission trial. (Shorewood, Wisconsin: departmental rule, Section 20.)

OUTSIDE EMPLOYMENT. Officers and members of the department shall devote their whole time to the business of the department and are expressly prohibited from being employed or giving their personal attention to any other position or business. This rule shall not apply where an officer or member of the Department is employed or engaged in war production work under contract with the United States or its agencies; provided however, that such employment, position, or outside business engaged in shall not interfere with the proper operation of the Department, and subject further to approval by the Chief. (Wauwatosa, Wisconsin: ordinance, Section 17.071.)

Officers and members of the Fire Department shall not follow any profession, trade, calling or business, but shall devote their entire time to the performance of their duties as members of the Fire Department. They shall not be allowed pay for any period for which they stand suspended from duty or for any period during which they shall absent themselves from duty, except as herein provided. (Huntington Park, California: civil service rule, Section XVIII.)

No member of the Fire Department shall be allowed, without the consent of the City Council, to receive any money, gratuity or compensation for any service he may render as a fireman. The members of the Fire Department shall not follow any other profession, calling, or business, but shall devote their entire time to the performance of their duties, nor shall they be allowed pay for any period during which they shall absent themselves from public duty, except as in this charter provided. (Sacramento, California: city charter.)

Restricted Employment. Supplementary outside employment is permitted, with certain restrictions, in 32.7 per cent (357 of 1,092) of the reporting cities. Once again, it is the 250,000-to-500,000 population group that has the greatest percentage of restrictions (52.5 per cent).

Fire chiefs in these cities were asked to indicate the types of restrictions imposed. Only 47 cities indicated a restriction placed on the number of hours per week that could be worked by an individual fireman. The number of hours ranged from eight to 48 hours per week. The median and mode were 24 hours.

The most common restriction imposed by these 357 reporting cities was the type of work permitted. Usually this involves the following: (1) supplementary employment is not to interfere with

the primary job of fire fighting; (2) supplementary employment shall not interfere with emergency off-duty calls; (3) supplementary employment shall not include strenuous work, hazardous duties, and night work. There are also four cities which require the fireman seeking outside employment to sign a waiver in which he gives up certain benefits provided by the city, such as sick leave, workmen's compensation, and other benefits, in the event that an accident should occur while performing his outside employment. An example of a request for outside employment, as used in Louisville, Kentucky, is shown in Appendix A.

The second most common restriction is that the supplementary outside employment must be creditable employment, one that will not detract from the fireman's dignity as an employee of the city. This includes restrictions against: bartending, cab driving, bell hopping, contractual services, any work that might involve the fireman in labor disputes, any of the licensed trades, employment requiring competitive bidding, or a job that might interfere with the livelihood of others.

The third major category of restricted employment listed by the fire chiefs was any type of work that would be aided by the influence of the fireman as an employee of the city. This includes the selling of fire insurance, fire equipment sales, and acting as an insurance claims adjuster.

A number of cities also restrict the rank of the fireman who is permitted to hold supplementary outside employment. All officers are restricted from outside jobs in nine cities and captains and assistant chiefs in 20 cities. The fire chief is prohibited from holding employment in practically all cities, the theory being that, as chief of the department, he is on duty all of the time, especially in time of emergency.

Of the cities permitting outside employment under certain restrictions, 83.3 per cent require prior approval of the proposed employment. Approval of the chief alone is required in 188 cities. Other officials that may be required to approve the applications include: the civil service commission or personnel board in 11 cities; the safety director or commissioner in eight cities; the city manager or mayor in five cities; and the city council in four cities. The approval of the fire chief *and* some higher official, such as the mayor, the manager, or civil service commission, is required in 51 cities. An example of an application blank requiring multiple permission, as used in Louisville, Kentucky, is shown in Appendix A.

In New York City, for those members in the fire department employed prior to October 1, 1956, a rather detailed set of regulations has been adopted regulating supplementary outside employment. (All firemen employed after October 1, 1956, are prohibited from holding outside employment.) These regulations specifically prohibit firemen from taking certain outside jobs including services to eliminate fire violations, sales of fire equipment, sales of tickets while in uniform for lotteries or other purposes, soliciting for commercial and professional fund raising drives, or "the soliciting of business of any kind where the prestige of a member's fire department connection enhances his value as a solicitor."

New York firemen must obtain written approval before taking other types of employment such as insurance adjusting; insurance sales; employment of other members of the fire department; automobile insurance; hazardous occupations; all occupations requiring a certificate of fitness or special permit from the fire department; installations of oil burners, refrigeration equipment, air compressors, gasoline tanks, and similar equipment; and any ownership, management, or control of corporations, partnerships, or businesses employing three or more persons or "involving the investment of substantial sums of money, and heavy contractual business commitments."

The New York regulations further specify that firemen who are granted permission to practice law "or other occupations considered professional" must obtain written approval of the employment board every six months for the extension of the work permit.

The New York regulations provide for an employment board to administer and enforce the regulations and to make decisions on individual cases. The board is composed of the fire chief, two deputies, the president of the Uniformed Fire Officers' Association, and the president of the Uniformed Firemen's Association.

The application for outside employment used in Riverside, California, contains the following provision: "3. That the City of Riverside will not be subject to claim or be held liable for any damages, injuries, or illnesses incurred through my outside employment."

The heading of the application for approval of outside employment in Napa, California states:

No City employee shall engage in any regular, paid outside employment, activity, or enterprise without prior written approval. All requests for approval must be submitted to your Department Head and the City Manager on the following form.

No City employee shall engage in any paid outside employment, activity, or enterprise which has been determined to be inconsistent, incompatible, or in conflict with his duties as a City employee.

Any employment, activity, or enterprise which will prevent prompt response to a call to report to duty in an emergency or when otherwise urgently required by Department rules will be considered to be inconsistent, incompatible, and in conflict with your duties as a City employee.

It is also interesting to note the language of the Stevens Point, Wisconsin, Fire Department Rule #35:

Members of the fire department will not engage in off-duty occupations which call for regular hours and place a fireman on a regular payroll other than that of the City of Stevens Point. The intent and purpose here is to preserve and retain the fidelity and duty of the fireman exclusively to the fire department, but not to arbitrarily prohibit an otherwise industrious and energetic member from augmenting his income by participating in odd jobs where such participation imposes no hardship or penalty on any other person and does not divert or divide the allegiance of the fireman.

A few cities indicated that, although they have departmental rules prohibiting the supplementary outside employment of firemen, the rules have not been effectively enforced. The attempt at enforcement of a dormant rule may also have the following effect:

Approximately a year ago I [a city manager] endeavored to enforce the rules of the police and fire department which prohibited outside employment in order to provide more jobs in this industrial city which was rather hard hit by the recession. The fire fighters immediately brought action in court to enjoin me from enforcing the rules. After prolonged discussions, the City Council decided against any stringent regulations of this sort, and as a result, the portion of the Municipal Code governing employees was amended. . . . The amendment in effect allows every employee to hold two jobs as long as it is not incompatible with his municipal employment. As to what is incompatible, about the only two distinct definitions that could be found were that a police officer should not tend bar and a fireman should not be in the business of selling fire extinguishers.

No Restrictions. No restrictions are imposed against the outside supplementary employment of firemen in 616 of the 1,092 reporting cities. This amounts to 56.4 per cent. This percentage is greatest in the 10,000-to-25,000 population group where the number of cities in which no restrictions are applied accounts for 65.2 per cent of the reporting cities, and it is the least in the 250,000-to-500,000 population group in which there is only one city which does not impose any restrictions upon the supplementary outside employment of firemen.

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Note. This report was prepared by Philip R. Tuhy, staff member, the International City Managers' Association.

Appendix A

CITY OF LOUISVILLE, KENTUCKY

DEPARTMENT OF PUBLIC SAFETY

Division of Fire

APPLICATION FOR WORKING ON OFF-DAY

To be submitted to the Fire Chief in FOUR copies, one each for:

Director of Safety

Fire Chief

Commanding Officer

Applicant

Applicant's Name: _____
LAST FIRST MIDDLE

Applicant's Address _____

Applicant Assigned to _____ Company No. _____

Applicant's Home Telephone Number: _____

Off-Day Employer: _____

Off-Day Employer's Address: _____

Off-Day Employer's Telephone Number: _____

Off-Day Working Hours: _____

Type of Work on Off-Day: (Describe in Detail) _____

(Continue this answer on back of this sheet if necessary)

Reason for Off-Day Employment: _____

Does Off-Day employer employ organized labor? _____

If so, are you a member of their local? _____

If organized labor is employed and you are not at present a member of their local, will you become a member of their local? _____

(OVER)

Appendix A (continued)

APPLICATION FOR WORKING ON OFF-DAY (Continued)

WORKING CONDITIONS:

If my application is approved I do hereby agree to the following conditions:

1. Waiver my pension rights from the Louisville Firemen's Pension Fund during the hours of employment as set out on preceding page.
2. The above employment will not require my absence from the metropolitan area of the city.
3. Employment shall not result in unfair competition with regular employees of any company or employer for which part time work is undertaken (i. e. members of the department shall not work for a lesser equivalent wage rate than that paid regular employees).
4. No work shall be undertaken on individual contract unless such contract can be completely performed by the individual alone, and in no event shall any member of the department undertake a contract which is to be performed by the employment of other employees either from the department or from outside of the department.
5. I will not allow this employment to cause undue fatigue or infringe upon my duties as a fireman in any way. Any work shall be confined principally to daylight hours, and in no event shall any work be done between the hours of 12 midnight and 7:00 A. M.
6. I will arrange to be on call in case of any emergency.
7. The Chief of the Division of Fire or the Director of Safety reserve the right to cancel any permission granted hereunder at any time and upon notification of such cancellation, I agree that I will immediately cease such off-time employment.
8. I understand that this permit, if granted, applies only to the work specified herein and that any other employment undertaken will place me in violation of fire department regulations and subject to disciplinary action.

Signature of Applicant: _____

Date: _____

APPROVED:

APPROVED:

